elsa

European Law Students' Association

Webinars on Law and Technology

Artificial Intelligence and Human Rights

Presentation

26 May 2020

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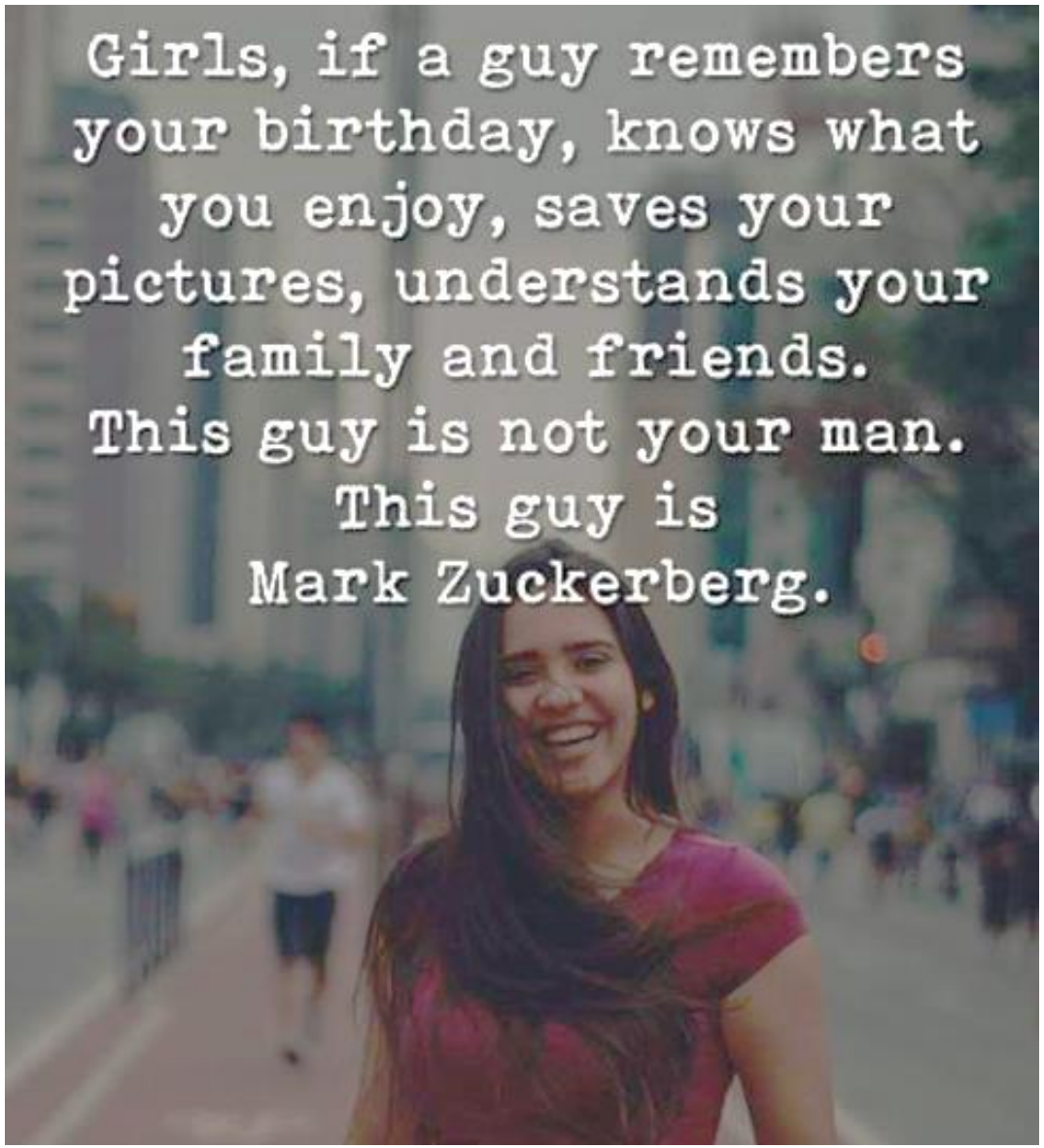
Head of the Information Society Department

My personal data are public

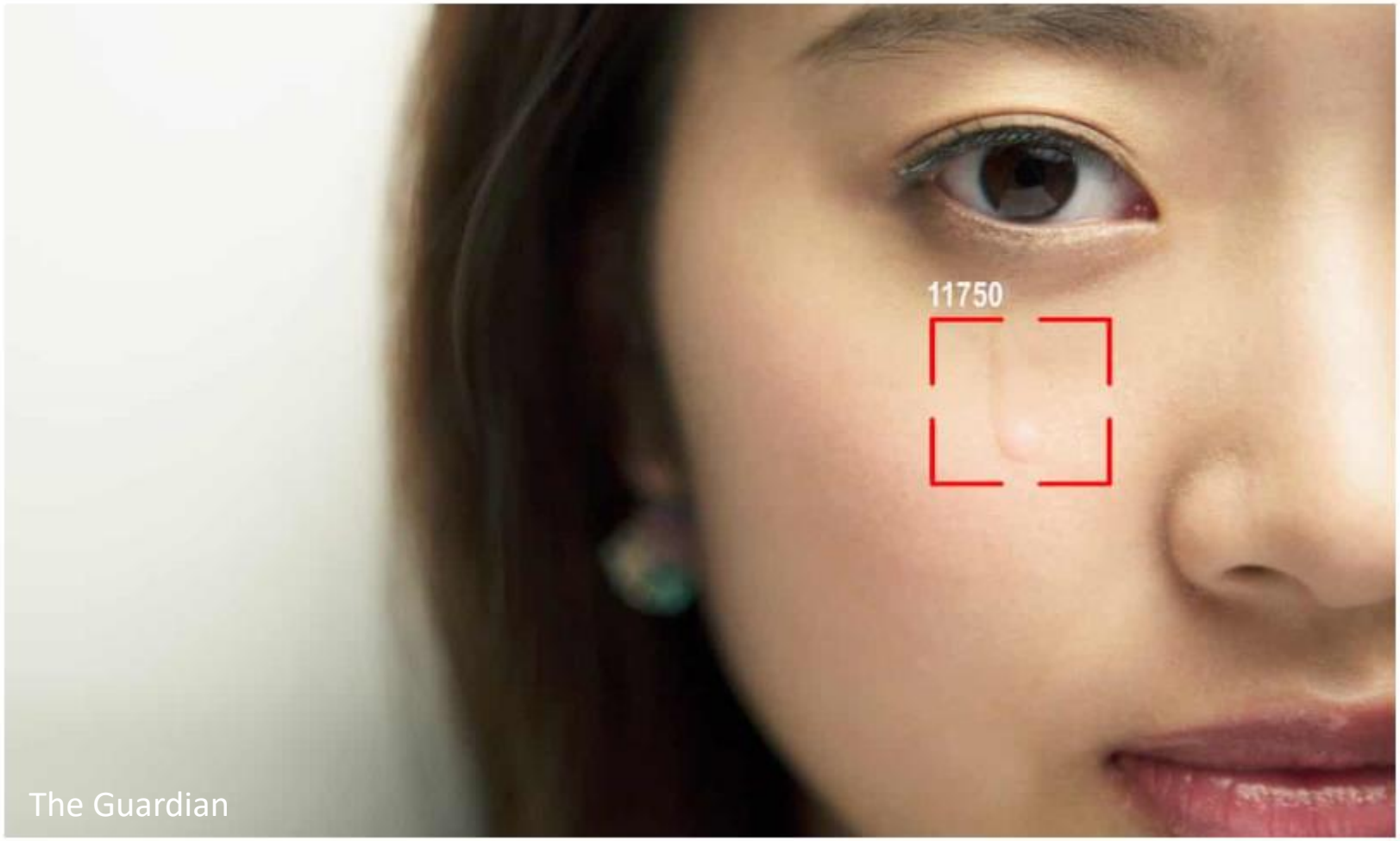


Personal data are not protected

Almost entire population of Ecuador had data leaked !

Machines are smart

Machines can now allegedly identify anger, fear, disgust and sadness. 'Emotion detection' has grown from a research project to a $20bn industry



The Guardian

I am always watched

Your face: a $20bn industry

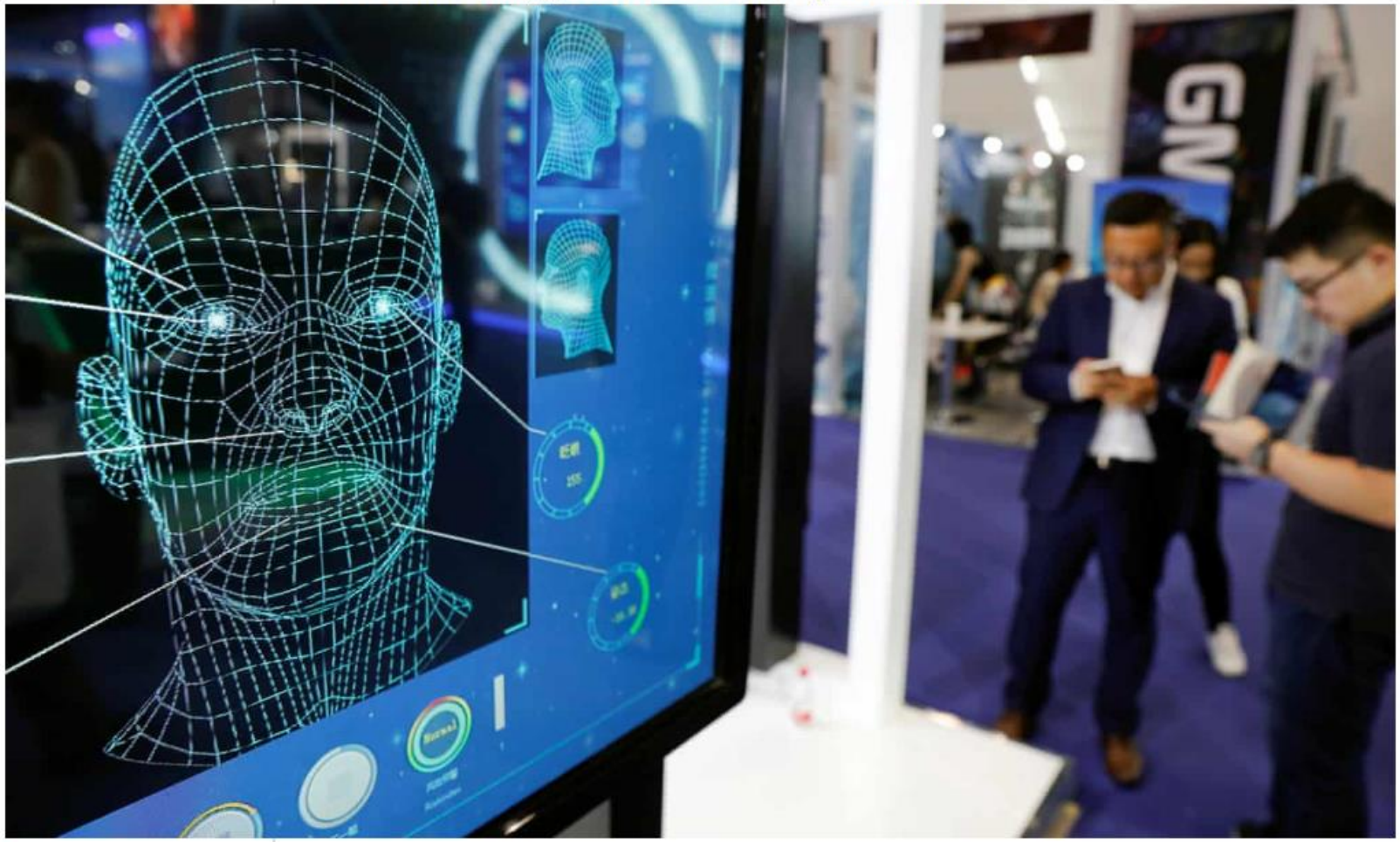
The Guardian

▲ Monitors display a video showing facial recognition software in use at the headquarters of the artificial intelligence company Megvii, in Beijing. Photograph: New York Times/eyevine

My face is recognised

A database of 7.5m faces from 87 countries

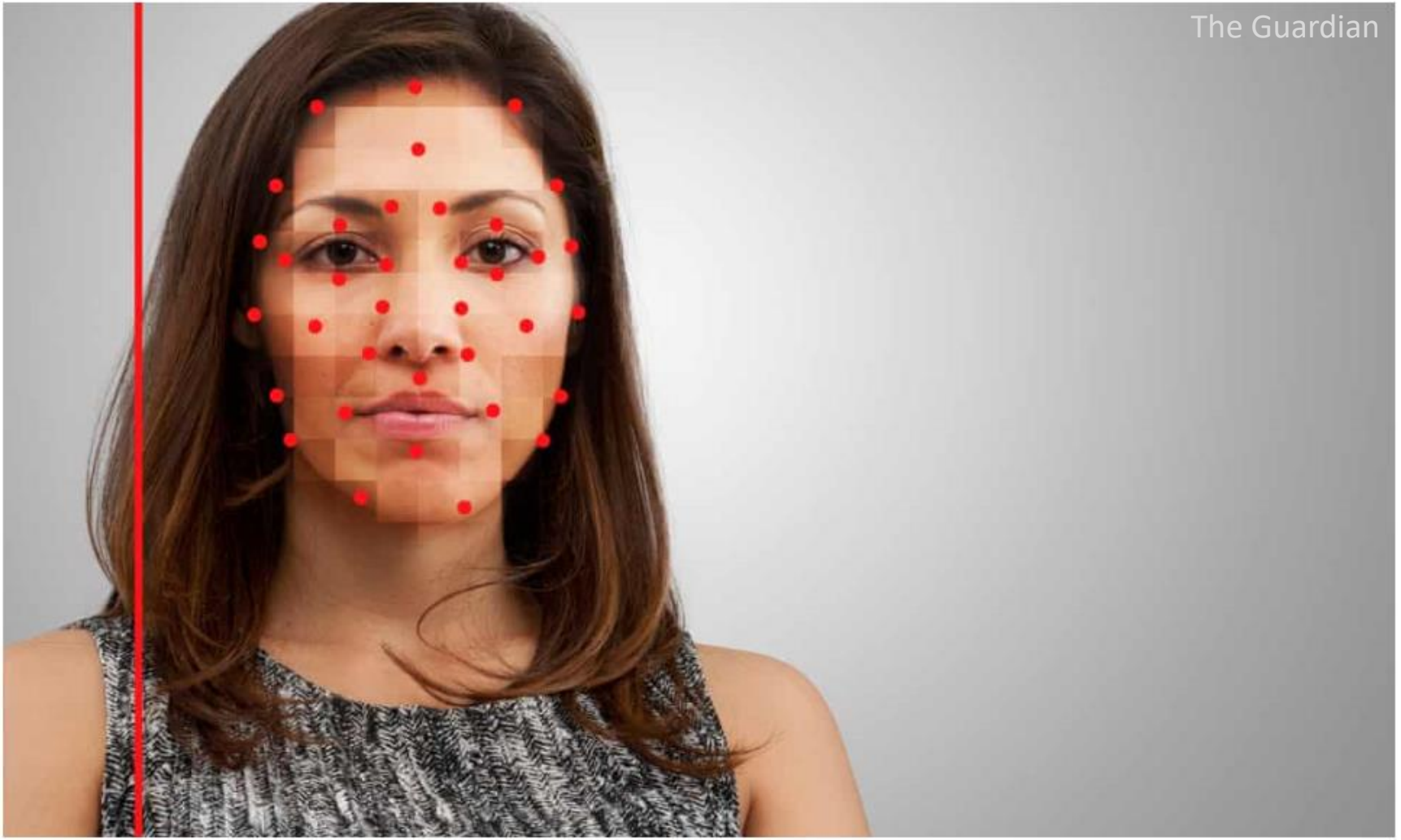
The Guardian



▲ Visitors check their phones behind the screen advertising facial recognition software during Global Mobile

As with most machine learning applications, progress in emotion detection depends on accessing more high-quality data.

My career depends on AI



▲ 'You're already seeing recruitment companies using these techniques to gauge whether a candidate is a good hire or not'. Photograph: John Lund/Getty Images/Blend Images

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

I am constantly profiled…

I like my phone

Who does not use a smartphone ?

My phone spies on me

Accelerometer
Gyroscope
Magnetometer
Barometer
Proximity
Light sensor
Touch screen

GPS
WiFi
Bluetooth
GSM/CDMA Cell
NFC: Near Field
Camera (front)
Camera (back)

Source: Internet

14 sensors!

I am always connected

AI selects my content

FACEBOOK Transparency Report

NUDITY
21 million removals
99,8% by AI

HATE SPEECH
2,5 million removals
38% by AI

TERRORIST CONTENT
1,9 million removals
99,5% by AI

GRAPHIC VIOLENCE
3,4 million removals
85,6% by AI

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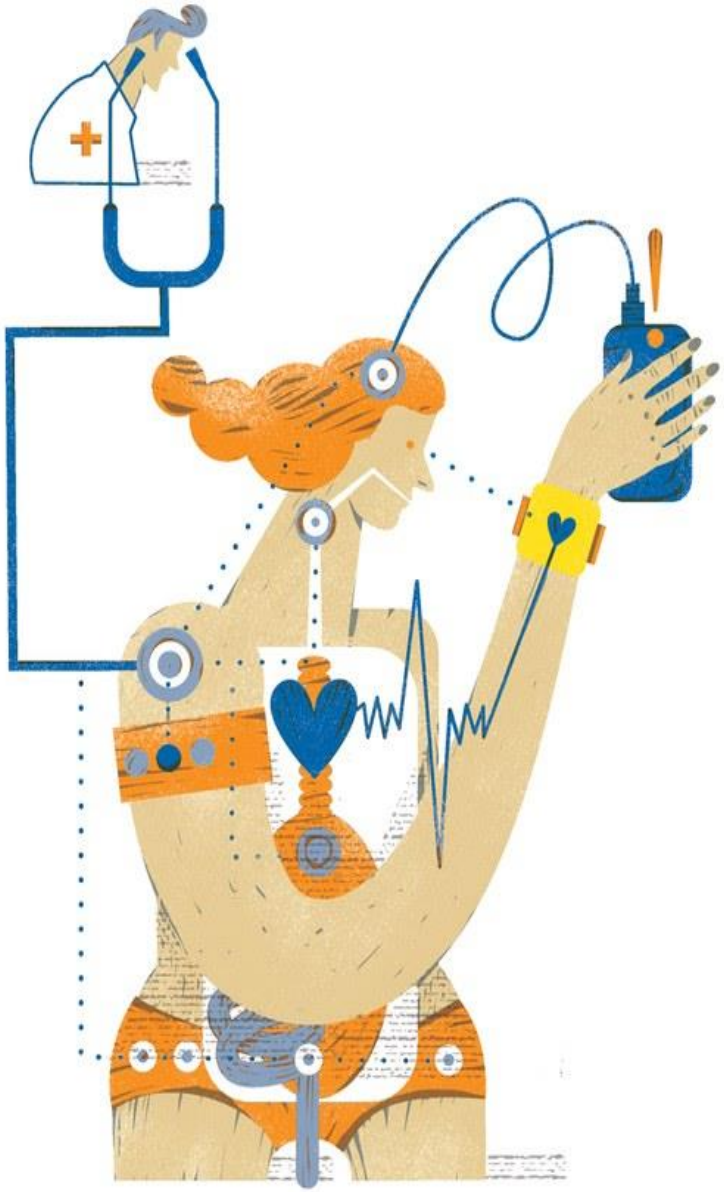
AI influences my opinion

AI monitors my health



Medical wearables:
will your doctor soon prescribe a fit bit ?

AI meets human beings

Sofia, a humanoid robot, gives interviews, increasing policy and consumer attention towards AI

Saudi Arabia has become the first country to give a robot, Sofia, citizenship (Independent)

Estonia considers legalising Artificial Intelligence (Medium)

OECD assesses how governments should regulate AI (The Conversation)

"Law requires reshaping as AI and robotics alter employment" (International Bar Association)

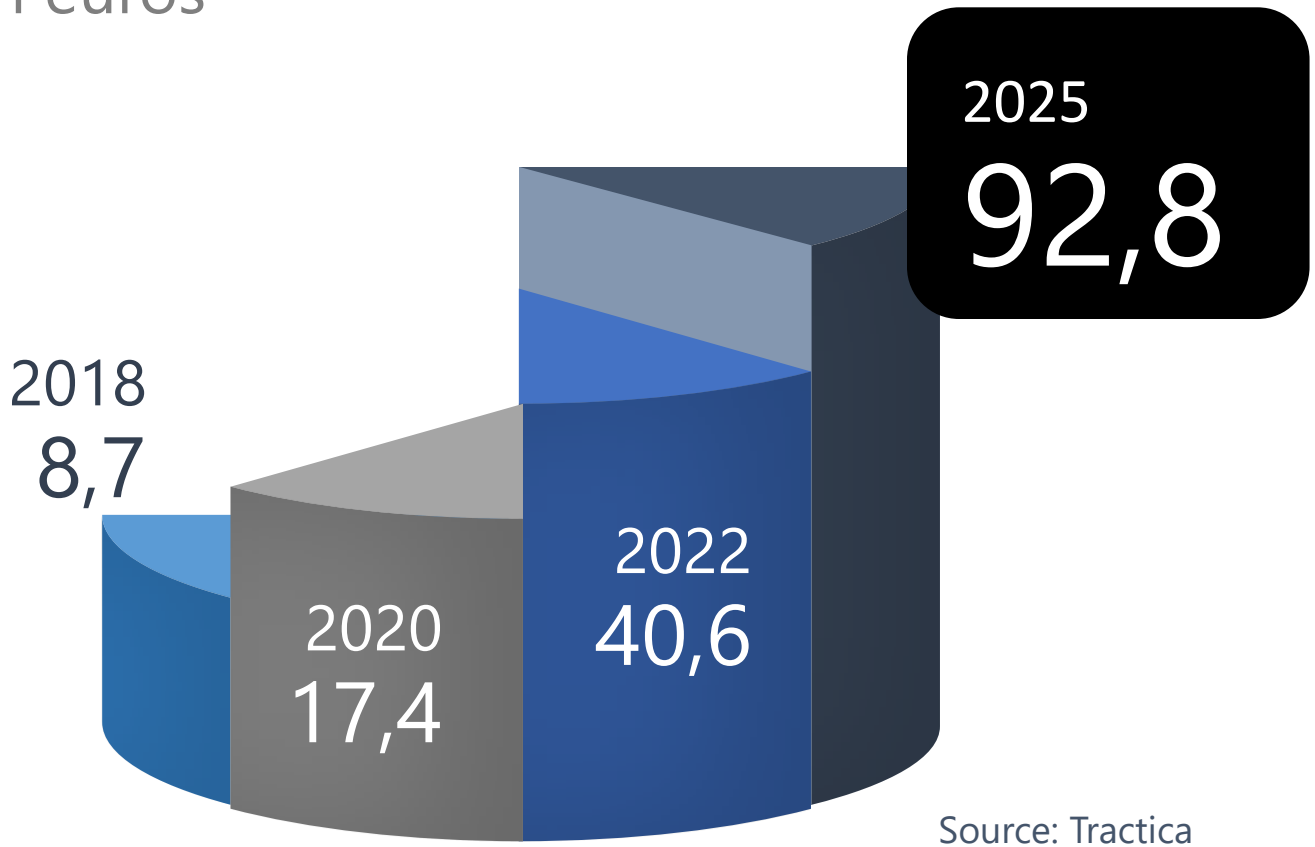
Predictive policing was secretly tested in New Orleans (The Verge)

"Academia must step up and educate lawmakers on regulating algorithms!" (New York Times)

"Everything we teach should be different from machines" (Jack Ma)

Where are we going ?

Global AI market
in billon euros



Source: Tractica

The future is uncertain

Artificial intelligence, quantum computing, 5G and the rise of the **Internet of Things** are just some of the **emerging technologies** that could aid cybercriminals in ways that could make them more dangerous than ever – and **law enforcement must innovate** quickly in order to help keep citizens safe.

What is at risk?

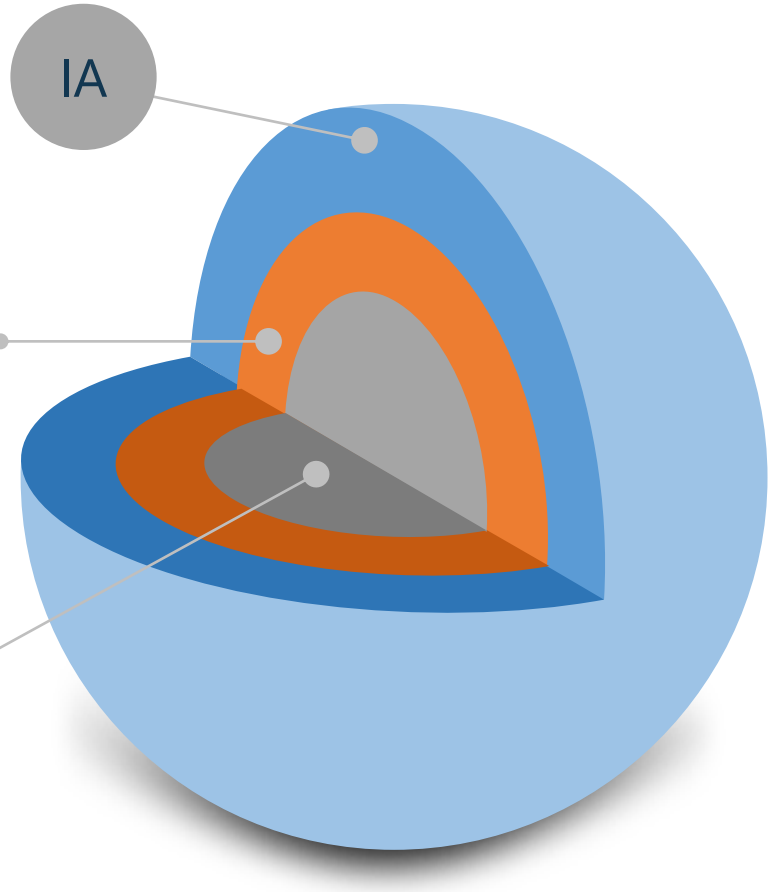
- ✓ **Right to private and family life**
- ✓ **Freedom of Expression**
- ✓ **Right to participate in democratic processes, such as elections, free from undue influences**

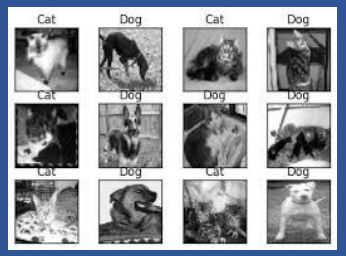
What are we talking about?

Artificial intelligence
Whole discipline
Including developments
totally speculative

Machine learning
Represents a given environment
by statistical techniques

Deep learning
Machine Learning Category,
based on multiple levels of
neural networks





Big data Visualisation

Targeted Marketing

Image Classification

Identity Fraud Detection

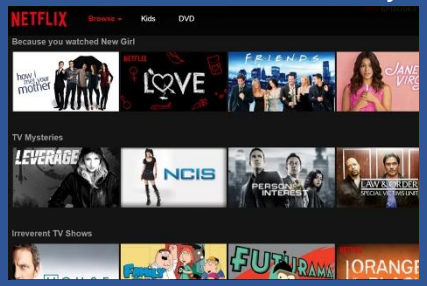
Self-supervised Learning

Unsuper-vised Learning

Supervised Learning

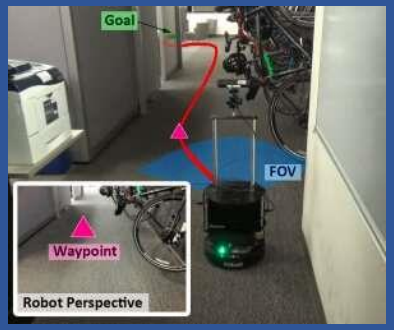
Recommender System

Weather Forecasting



Machine Learning

Deep Learning

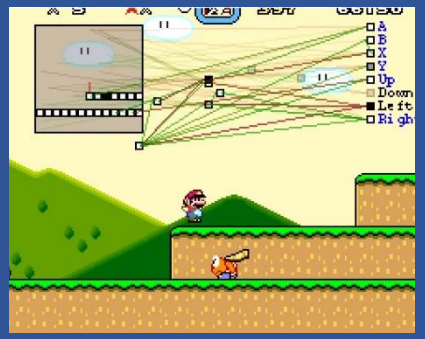


Reinforce-ment Learning

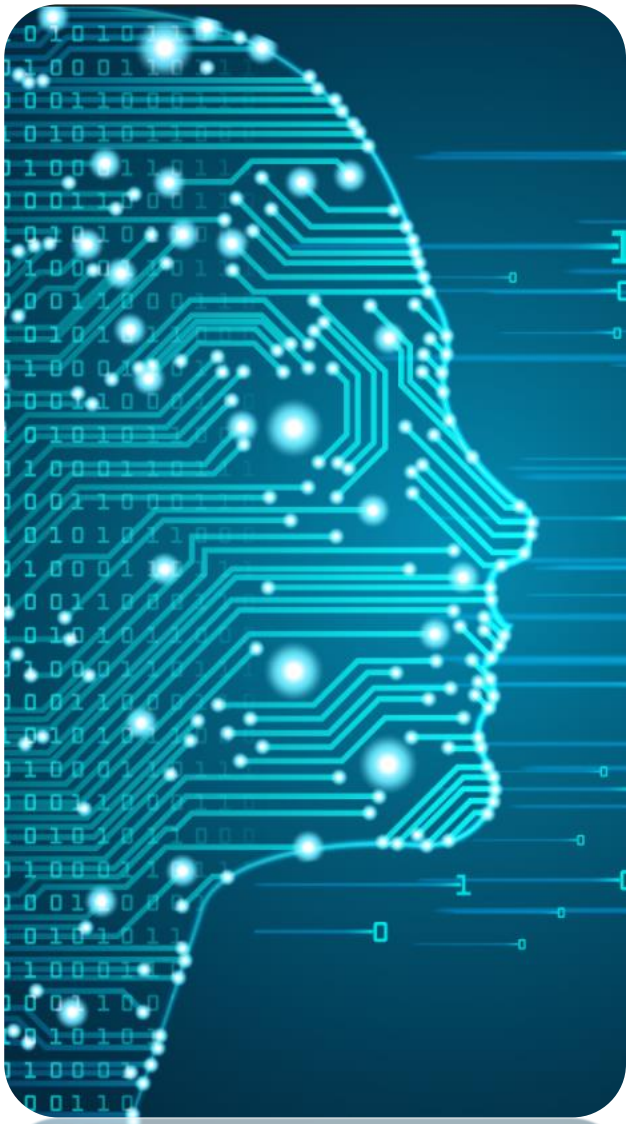
Real-Time Decisions

Robot Navigation

Learning Tasks



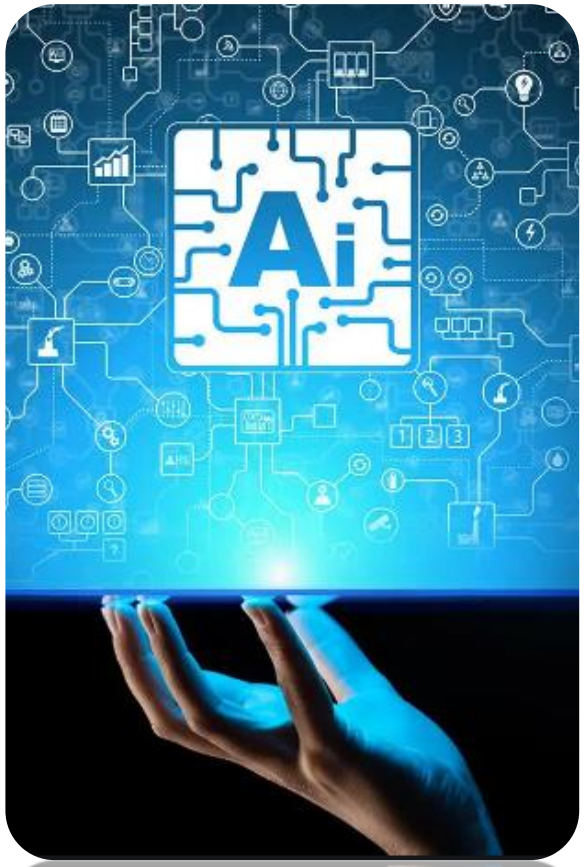
How to define AI?



A set of sciences, theories and techniques whose aim is to make a machine imitate the cognitive capacities of a human being.

Council of Europe's website:
http://www.coe.int/ai

How to define AI?



Artificial intelligence (AI) systems are software (and possibly also hardware) systems designed by humans that, given a complex goal, act in the physical or digital dimension by perceiving their environment through data acquisition, interpreting the collected structured or unstructured data, reasoning on the knowledge, or processing the information, derived from this data and deciding the best action(s) to take to achieve the given goal.

European Commission independent High Level Expert group on AI

How to define AI?

Conclusion: Artificial intelligence is an umbrella term for many algorithmic applications

Applications impacting HR

Example of AI tools

- Contact tracing
- Biometric and facial recognition
- Predictive policing
- Algorithmic decision-making or support

Example of domains

- Law enforcement, justice,
- Human Resources management
- Healthcare
- Public services

COVID-19 Contact tracing apps

Contact Tracing Apps are being used in 23 countries

Alternative digital tracking measures are active in 22 countries

Physical surveillance technologies are in use in 10 countries

COVID-19-related censorship has been imposed by 12 governments

Internet shutdowns continue in 4 countries despite the outbreak

There are currently 43 contact tracing apps available globally

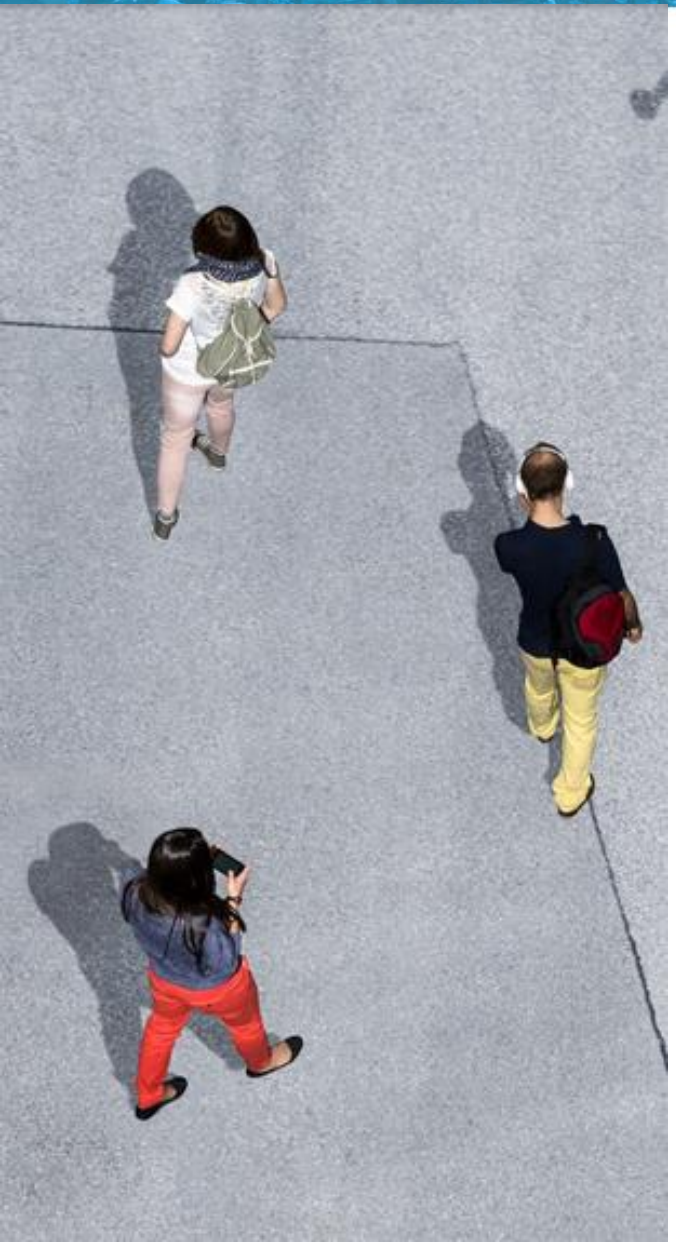
India's Aarogya Setu is the most popular, with 50 million downloads

28% of apps have no privacy policy

64% of apps use GPS rather than Bluetooth

Source: TOP10VPN

Contact tracing & human rights



Fundamental rights to be protected:

- ✓ Data protection and privacy
- ✓ Freedom of association
- ✓ Freedom of movement
- ✓ Right to health

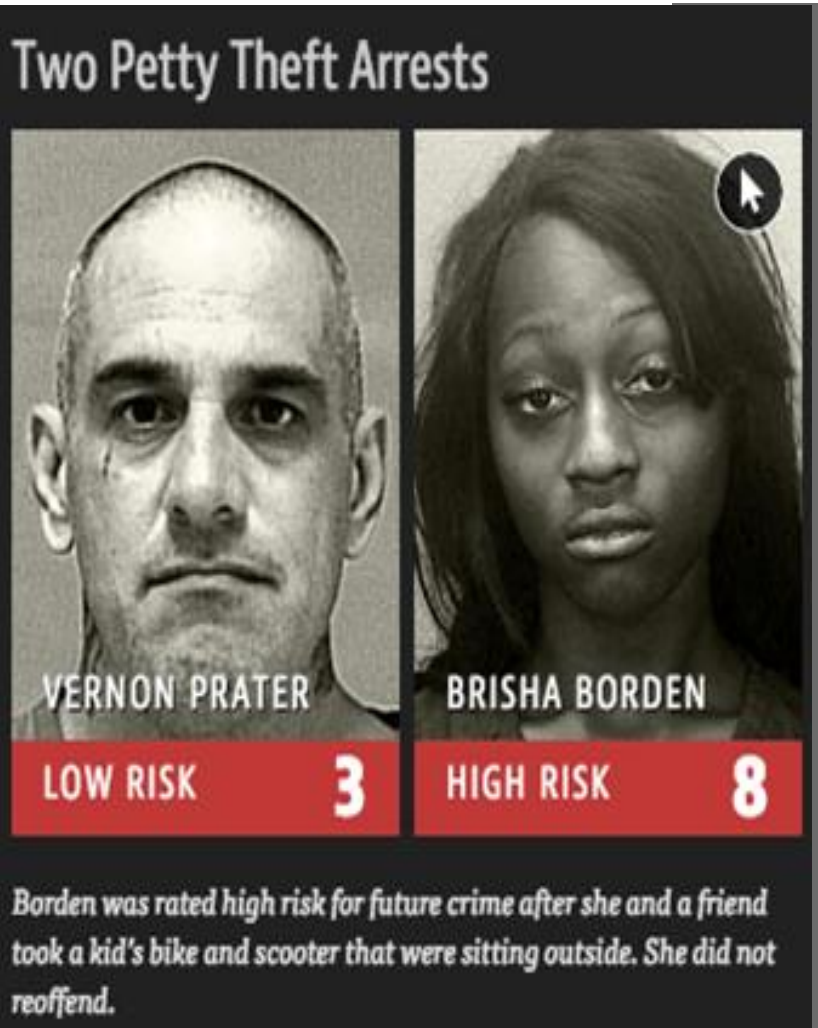
Principles for "democratic tracing" applications:

- ✓ Democratic participation
- ✓ Voluntary base, stimulating engagement
- ✓ Decentralised data, anonymised databases
- ✓ Privacy by design and by default
- ✓ Measures limited in scope and in time
- ✓ Fairness and non-discrimination
- ✓ Critical assessment by the governments

Source: Council of Europe webinar COVID-19: myths and realities of tracking applications

Applications impacting HR

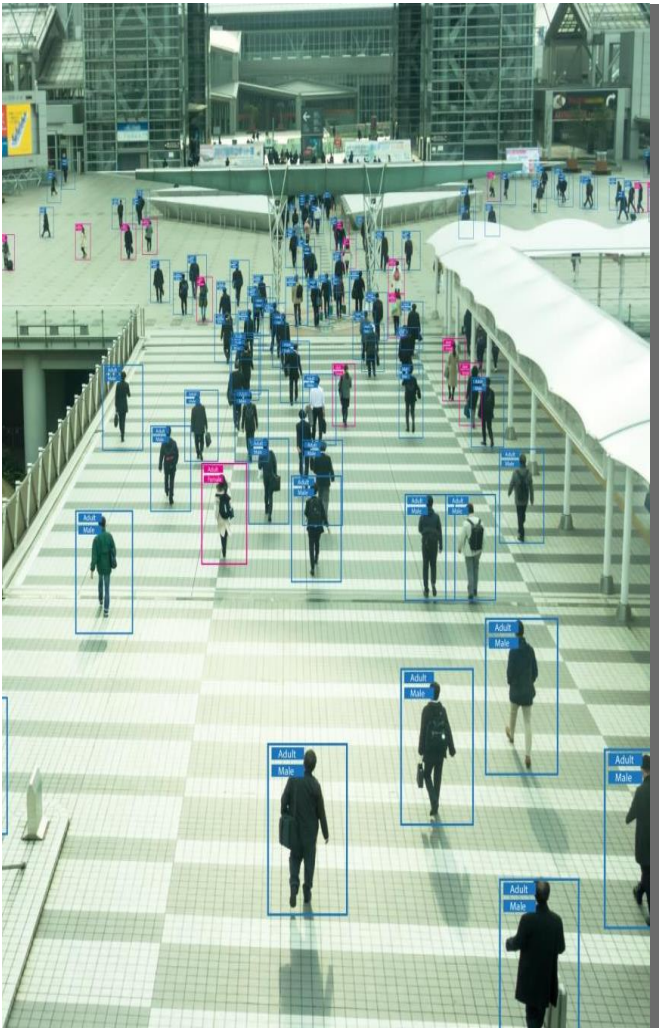
Articles 5 & 6 of the ECHR:
Right to liberty and security, Right to a fair trial



Predictive policing →	Risk of strengthened discrimination
Risk-assessment tools in criminal matters →	Discrimination, resurgence of determinism and lack of an individualised approach to sentencing, breach of equality of arms…
Predictive justice →	Risks of undermining judicial impartiality

Applications impacting HR

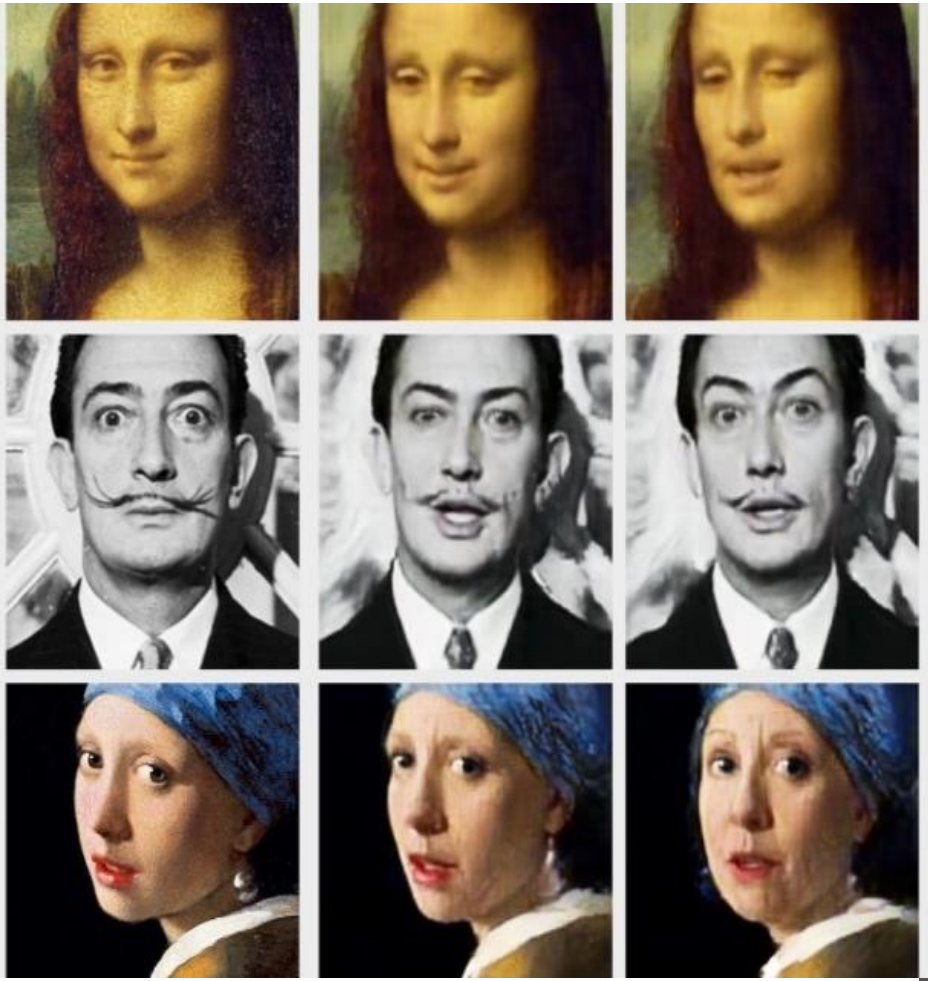
Article 8 of the ECHR: Respect for private and family life, residence and correspondence



AI-driven mass surveillance	Chilling effect Link with other freedoms: religion, expression & association
"Emotion detection" for employment, security and education	Lacks scientific basis but employed in areas related to individual self-development (education, employment)
Processing of biometric data	Under the GDPR, for identification but not for categorisation nor profiling

Applications impacting HR

Article 10 of the ECHR: Freedom of expression



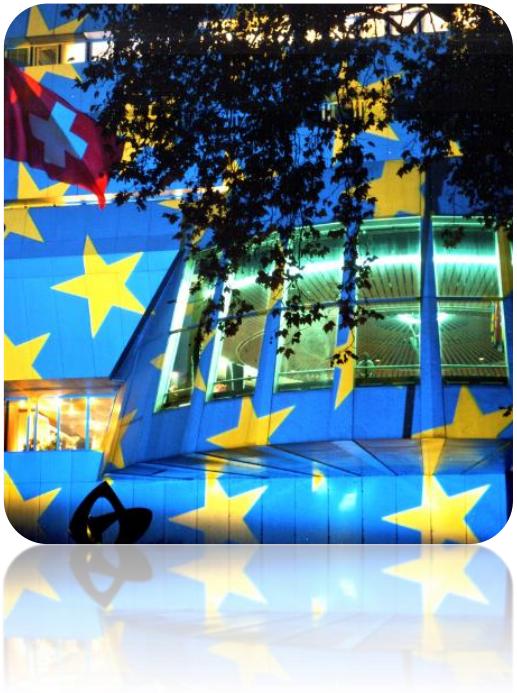
Content selection and "filter bubbles"

"Deep fakes"

Removal of extremist content

Council of Europe **AI focus**

POLICY AREAS



- ✓ Data processing and human rights
- ✓ **Use of AI by the Judiciary**
- ✓ Criminal law implications of AI
- ✓ **Bioethics and AI**
- ✓ Environment
- ✓ **Education**
- ✓ Gender equality, Youth
- ✓ **Children**, Anti-discrimination
- ✓ Culture, Eurimages
- ✓ **Elections**
- ✓ Freedom of expression

CEPEJ **ethical chart**

European Ethical Charter on the use of artificial intelligence (AI) in judicial systems and their environment

5 principles

- ✓ Principle of respect of fundamental rights
- ✓ Principle of non-discrimination
- ✓ Principle of quality and security
- ✓ Principle of transparency, neutrality and intellectual integrity
- ✓ Principle "under user control"

ECRI study on discrimination

This study, entitled "Discrimination, Artificial Intelligence and Algorithmic Decision Making", prepared by Professor Frederik Zuiderveen Borgesius for the Council of Europe Anti-Discrimination Department, addresses the risks of discrimination caused by algorithmic decision-making and other types of artificial intelligence.

Data Protection

CURRENT FOCUS

Promote **Guidelines on Artificial Intelligence** and data protection

Ensure **ratification of the amending protocol** of Convention 108 +

NEW PRIORITIES

Set guidelines on safeguarding privacy in the fields of:

- **facial recognition**
- **national education systems**
- **abuse of electoral data**
- **profiling**

Human Rights

Recommendation on the human rights impacts of algorithmic systems

Obligations of States: The process of drafting, enacting and evaluating policies and legislation or regulation applicable to the design, development and ongoing deployment of algorithmic systems should be transparent, accountable and inclusive.

Responsibilities of private sector actors: Private sector actors engaged in the design, development, sale, deployment, implementation and servicing of algorithmic systems, whether in the public or private sphere, must exercise due diligence in respect of human rights.

PACE policy focus on AI

Parliamentary Assembly

Upcoming Reports

- **The role of AI in policing** and criminal justice systems
- **Preventing discrimination** caused by the use of artificial intelligence
- **Need of democratic governance** of AI
- **The human being-machine connection**: the rights or new threats to fundamental freedoms ?

Regulating AI – why?

AI can be regulated by:

- ✓hard law
- ✓soft law and ethical frameworks

Regulating AI – why?

Hard law

Examples of binding legislation

- **Universal Declaration of Human Rights**
- International Covenant on Civil and Political Rights
- **International Convention on the Elimination of All Forms of Racial Discrimination**
- Convention on the Elimination of All Forms of Discrimination against Women
- **Convention for the Protection of Human Rights and Fundamental Freedoms**
- Charter of Fundamental Rights of the European Union

Limitations

- ✓ **Not specific to AI**
- ✓ **Length of proceedings in courts** – need of expertise, potential for divergent jurisprudence
- ✓ **Do we want to assume the risk of damage to regulate?** (cf. regulation of the internet)

Regulating AI – why?

Soft law and ethical frameworks examples

- **Council of the European Union**: Artificial Intelligence for Europe
- **Independent High-Level Expert Group on Artificial Intelligence** set up by the European Commission: Ethics guidelines for trustworthy AI and Policy and Investment Recommendations
- **G20**: Human-centered Artificial Intelligence
- **OECD**: Principles on AI and Recommendation of the Council on Artificial Intelligence
- **UNESCO**: Preliminary study on the technical and legal aspects relating to the desirability of a standard-setting instrument on the ethics of artificial intelligence

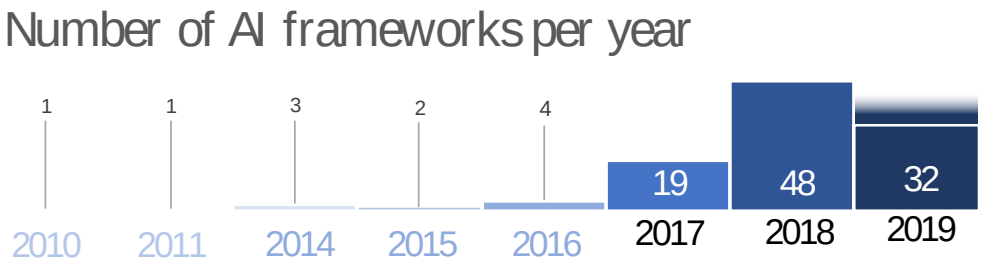
Limitations

- ✓ **Significant efforts** to set a framework for AI design with non binding principles
- ✓ **No oversight** mechanism
- ✓ **No translation for AI engineers** (how to code dignity?)
- ✓ **Same principle could be interpreted** in many different ways

Regulating AI – why?

Analysis of 84 guidelines

- ✓ No single common principle
- ✓ **Eleven overarching ethical values** and principles have emerged: the most frequent ones are **transparency**, **justice** and **fairness**, **non-maleficence**, **responsibility** and **privacy**.
- ✓ Guidelines tend to agree on some of these generic principles but they sharply disagree over the details of what should be done in practice.



Source: The global landscape of AI ethics guidelines

Conclusion

- ✓ There are many existing frameworks on AI (binding and non-binding)
- ✓ There is room for **a new legal framework on AI**

Regulating AI – how?

CAHAI

Ad hoc Committee on Artificial Intelligence

- **Intergovernmental Committee set up in September 2019**
- Mandate delivered by the Committee of Ministers until 31 December 2021

To examine, on the basis of broad multi-stakeholder consultations, the **feasibility** and potential elements of a **legal framework** for the development, design and application of artificial intelligence, **based on Council of Europe standards** in the field of human rights, democracy and the rule of law

Regulating AI – how?

CAHAI

Ad hoc Committee on Artificial Intelligence

- Representatives designated by the 47 member States
- Representatives designated by the 5 observer States (Canada, Holy See, Japan, Mexico, United States)
- Other bodies and sectors of the Council of Europe
- Other regional and international organisations (European Union, OECD, United nations, etc.)
- Private sector (partnership with digital companies)
- Civil society and academia

Regulating AI – how?

Integrated approach

Various Council of Europe's bodies and sectors

Vertical and specialised focus

E.g. Justice, Health, Democracy, Freedom of expression, etc.

All types of legal instruments, based on / feed into CAHAI's definitions and principles

CAHAI

Horizontal and transversal approach

Definitions and core principles

Type of legal instrument to be defined

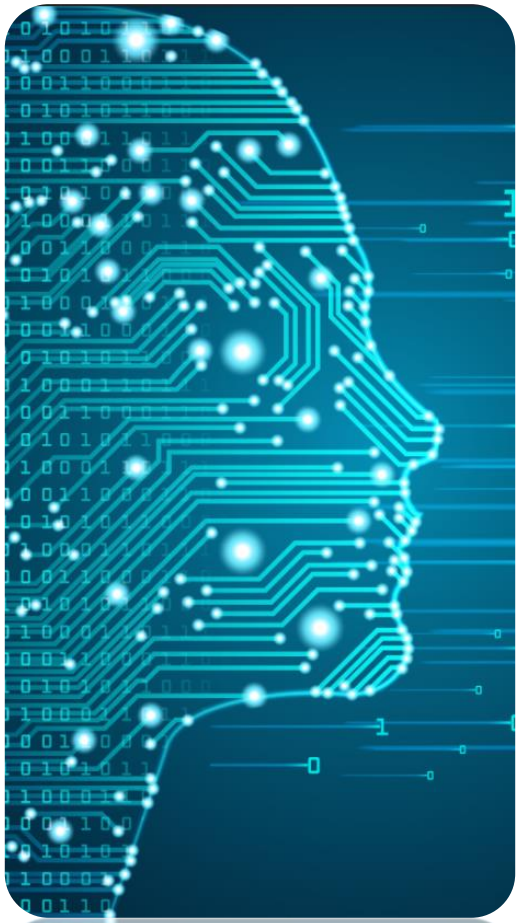
Regulating AI – how?

01
Mapping & Feasibility

02
Consultation

03
Regulation

CAHAI roadmap



01

Mapping & Feasibility

Identify possible gaps in applicability and enforceability of existing frameworks, proposing different types of legal instruments

Regulating AI – how?

CAHAI

Ad hoc Committee on Artificial Intelligence

First conclusions

- **Risks of lobbying** by some digital companies to prevent regulation
- Risks of multiple and non compatible national regulations
- **Development of AI needs trust**: trust cannot be decreed, but must be proven
- **Council of Europe** is the organisation that could bring the « brick » of regulation to create trust based on human rights, democracy and the rule of law

Thanks for your attention !

further resources:

www.coe.int/**freedomofexpression**

www.coe.int/**dataprotection**

www.coe.int/**cybercrime**

www.coe.int/**AI**

Facebook Page
Information Society Group

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47 MEMBER STATES
47 ÉTATS MEMBRES